



PATENT

2182
SPE/

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Jagadish Bandhole, Sekaran Nanja, Shan Balasubramaniam

Assignee: VERITAS Operating Corporation

Title: CROSS-SPECTRUM APPLICATION MODEL FOR DYNAMIC COMPUTING ENVIRONMENTS IN SOFTWARE LIFECYCLE

Serial No.: 10/044,290 Filed: January 11, 2002

Examiner: Unassigned Group Art Unit: 2182

Docket No.: VRT0078US

Austin, Texas
January 21, 2005

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

SUBMISSION OF POWER OF ATTORNEY BY ASSIGNEE OF ENTIRE INTEREST

Dear Sir:

Enclosed is a *Power of Attorney By Assignee of Entire Interest* and supporting documents appointing the attorneys listed as attorneys of record in regards to the above-referenced application.

Please direct all inquiries concerning this submission to the undersigned attorney at (512) 439-5084.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on January 21, 2005.

1/21/05
Date of Signature

Attorney for Applicant

Respectfully submitted,

Samuel G. Campbell, III
Attorney for Applicant
Reg. No. 42,381
Telephone: (512) 439-5084
Facsimile: (512) 439-5099

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JAN 25 2005
U.S. PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ASSIGNEE: **VERITAS Operating Corporation**

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

**POWER OF ATTORNEY BY ASSIGNEE
OF ENTIRE INTEREST**

Sir:

The above-identified assignee, a Delaware corporation, hereby revokes all powers of attorney previously given and appoints the attorneys and/or agents identified below to prosecute the applications listed in Appendix A and to transact all business in the United States Patent and Trademark Office in connection therewith:

Joseph FitzGerald (33,881); John Brigden (40,530); Julie Stephenson (41,330) and Marc R. Ascolese (42,268); Brenna A. Brock (48,509); Samuel G. Campbell (42,381); Justin M. Dillon (42,486); Jonathan N. Geld (44,702); D'Ann Rifai (47,026); and Eric A. Stephenson (38,321).

Please continue to address all correspondence and telephone calls regarding this application to:

Samuel G. Campbell III
CAMPBELL STEPHENSON ASCOLESE LLP
4807 Spicewood Springs
Building 4, Suite 201
Austin, Texas 78759
Telephone: 512-439-5084
Facsimile: 512-439-5099

ASSIGNEE CERTIFICATION UNDER 37 CFR 3.73(B)

The undersigned representative of the above-identified assignee certifies that the above-identified assignee is the assignee of the entire right, title and interest in the above-identified patent application by virtue of a chain of title from the inventor(s) of the patent applications identified in Appendix A to the above-identified assignee as shown below:

1. From the inventors to Jareva Technologies, Inc. as recorded in the Patent and Trademark Office (see Appendix A); and
2. From Jareva Technologies, Inc. to Veritas Operating Corporation as recorded herewith (see attached copy of pertinent sections of merger documents).

The undersigned (whose title is supplied below) is empowered to sign this certificate on behalf of the above-identified assignee.

November 16, 2004
Date



Name: Ed Malysz
Title: Vice President & Assistant Secretary
VERITAS Operating Corporation

***** APPENDIX A *****

Assignee: VERITAS OPERATING CORPORATION

TOTAL APPLICATIONS = 14

(Count)	APPLICATION NO.	FILING DATE	REEL NO.	FRAME NO.	ATTORNEY DOCKET NO.
10.	10/044,290	January 11, 2002	012843	0582	VRT0078US

CONFIDENTIAL

COPY

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this “*Agreement*”) is made and entered into as of December 19, 2002 (the “*Agreement Date*”) by and among VERITAS Operating Corporation, a Delaware corporation (“*Parent*”), Jaguar Acquisition Corp., a Delaware corporation that is a wholly-owned subsidiary of Parent (“*Sub*”), Jareva Technologies, Inc., a Delaware corporation (the “*Company*”), and VERITAS Software Corporation, a Delaware corporation and the parent corporation of Parent (“*VERITAS*”).

RECITALS

A. The parties intend that, subject to the terms and conditions of this Agreement, Sub will merge with and into the Company in a reverse triangular merger (the “*Merger*”), with the Company to be the surviving corporation of the Merger and to become a wholly owned subsidiary of Parent as a result of the Merger, all pursuant to the terms and conditions of this Agreement and a Certificate of Merger conforming to the provisions of Section 251 of the Delaware General Corporation Law in substantially the form of Exhibit A attached hereto (the “*Certificate of Merger*”) and the applicable provisions of the laws of the State of Delaware. Upon the effectiveness of the Merger, all of the outstanding capital stock of the Company will be converted into the right to receive certain cash consideration from Parent.

B. The Board of Directors of the Company (i) has determined that the Merger and all related transactions are advisable and fair to, and in the best interests of, the Company and its stockholders, (ii) has approved this Agreement, the Merger, the Escrow Agreement (as defined below) and the other transactions contemplated by this Agreement and the Escrow Agreement, and (iii) has determined to recommend that the stockholders of the Company adopt and approve this Agreement and approve the Merger, the Escrow Agreement and the transactions contemplated thereby.

C. Concurrently with the execution of this Agreement, and as a condition and inducement to Parent’s willingness to enter into this Agreement, certain stockholders of the Company listed on Schedule 3.2.3 hereto (the “*Principal Stockholders*”) are entering into voting agreements in substantially the form attached hereto as Exhibit B (the “*Voting Agreements*”), pursuant to which each Principal Stockholder will, among other things, (A) irrevocably agree to vote all shares of the Company’s capital stock owned by such Principal Stockholder in favor of the Merger and the transactions contemplated by the Merger; and (B) execute an Irrevocable Proxy substantially in the form attached as an exhibit to the Voting Agreement.

D. Concurrently with the execution and delivery of this Agreement, and as a condition and inducement to Parent’s willingness to enter into this Agreement, certain persons listed on Schedule 9.14 hereto (the “*Key Employee Stockholders*”) are each entering into non-competition and non-solicitation agreements with Parent in substantially the form attached hereto

as Exhibit C (the “*Non-Competition Agreements*”), to be effective as of the Effective Time (as defined in Section 2.2).

In consideration of the facts recited above and the representations, warranties, covenants and agreements set forth in this Agreement, the parties agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions. As used herein, the terms below shall have the following meanings. Unless the context otherwise requires, any of such terms may be used in the singular or plural, depending upon the reference.

“*Action*” means any action, suit, litigation, proceeding, arbitration, mediation, arbitral action, governmental audit, criminal prosecution or unfair labor practice charge, and any claim, inquiry or investigation of which written notice has been provided to the Company.

“*Affiliate*” means, with respect to any specified Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with such specified Person (where, for purposes of this definition, “control” (including the correlative terms “controlled by” or “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Person, whether through the ownership of stock, by contract or otherwise and shall include a party’s officers and directors).

“*Aggregate Series B Stock Amount*” means an aggregate amount equal to the product obtained by multiplying (i) the Series B Stock Amount (as defined in Section 2.8.1(a) below) by (ii) the total number of Series B Shares that are issued and outstanding as of immediately prior to the Effective Time.

“*Ancillary Agreements*” means the Voting Agreements, the Non-Competition Agreements, and any and all other agreements that are required to be executed by Parent, Sub or the Company pursuant to this Agreement.

“*Applicable Law*” means, collectively, all applicable federal, state, foreign or local laws, ordinances, regulations and rules, and all orders, writs, injunctions, awards, judgments and decrees applicable to the Company or to any of the Company’s assets, properties or business.

“*Business*” means the business of the Company and each Subsidiary as presently conducted, including, without limitation, engaging in developing, marketing or providing any products, services or technology that have been developed, marketed or provided by the Company or any Subsidiary, or as described in any price list, business plan, or product development plan or proposal of the Company.

the right to accelerate the maturity or performance of any obligation of the Company or any Subsidiary under any Material Agreement, or (iv) the right to cancel, terminate or modify any Material Agreement. The Company has not received any notice or other communication regarding any actual or possible material violation or breach of, or Default under, any Material Agreement.

3.13 No Restrictions. Neither the Company nor any Subsidiary is a party to, and no asset or property of the Company or any Subsidiary is bound or affected by, any judgment, injunction, order, decree, contract, covenant or agreement (noncompete or otherwise) that restricts or prohibits, or purports to restrict or prohibit, the Company or any Subsidiary, or that would, following the Effective Time, restrict or prohibit, or purport to restrict or prohibit, the Surviving Corporation or Parent, from freely engaging in any business or from competing anywhere in the world (including any contracts, covenants or agreements restricting the geographic area in which the Company may sell, license, market, distribute or support any products or technology or provide services; or restricting the markets, customers or industries that the Company may address in operating its business; or restricting the prices which the Company may charge for its products or technology or services), or includes any grant by the Company of exclusive rights or licenses.

3.14 Intellectual Property.

3.14.1 Ownership and Rights. Except as set forth in Schedule 3.14.1 to the Company Disclosure Letter, and without the obligation or requirement to pay royalties, license fees or other consideration to any third party, the Company and/or its Subsidiaries own, or have the right to use, sell and license all Intellectual Property Rights (as defined below) currently utilized in the conduct of their respective Businesses and/or necessary or required for the conduct of their respective Businesses (such Intellectual Property Rights being hereinafter collectively referred to as the “*Company IP Rights*”), including without limitation, the right to make, use, sell, offer to sell, import, duplicate, create derivative works of, perform, distribute and display all software products (in object and source code forms) currently used, licensed, sold or marketed by the Company or any of its Subsidiaries, or currently under development by the Company or any of its Subsidiaries, all without infringing, misappropriating or otherwise violating any Intellectual Property Rights of any third party. The Company is the registered owner of record of all URLs and domain names used in the Business.

3.14.2 No Conflicts; Royalties. Except as set forth in Schedule 3.14.2 to the Company Disclosure Letter, the execution, delivery and performance of this Agreement and the consummation of the Merger and the other transactions contemplated hereby will not: (a) constitute a material breach of any instrument or agreement governing any Company IP Rights (the “*Company IP Rights Agreements*”); (b) cause the forfeiture or termination, or give rise to a right of forfeiture or termination, of any Company IP Right; (c) materially impair the right of the Company or any of its Subsidiaries or the Surviving Corporation to make, use, sell, offer for sale, import, duplicate, perform, display, license or otherwise distribute any Company IP Right or portion thereof; nor (d) require the payment of any royalties, honoraria, fees or other payments

payable by the Company or any Subsidiary to any Person by reason of the ownership, manufacture, use, license, sale, offer for sale, importation, duplication, performance, display, distribution or disposition of any Company IP Rights.

3.14.3 Employees. No current or former employee, consultant or independent contractor of the Company or any of its Subsidiaries: (a) is or has been in material violation of any term or covenant of any employment contract, patent or invention disclosure agreement, invention assignment agreement, non-disclosure agreement, noncompetition agreement or any other contract or agreement with any other party by virtue of such employee's, consultant's, or independent contractor's being employed by, or performing services for, the Company or using trade secrets or proprietary information of others without permission; or (b) has developed any technology, software or other copyrightable, patentable, or otherwise proprietary work for the Company that is subject to any agreement under which such employee, consultant or independent contractor has assigned or otherwise granted to any third party any rights (including Intellectual Property Rights) in or to such technology, software or other copyrightable, patentable or otherwise proprietary work.

3.14.4 No Infringement by the Company. Neither the manufacture, marketing, license, sale, offer for sale, importation, duplication, distribution or intended use of any software, product or technology currently licensed, sold or marketed by the Company or any of its Subsidiaries or currently under development by the Company or any of its Subsidiaries, or the provision of any services currently performed by the Company or any of its Subsidiaries, violates any license or agreement between the Company or any of its Subsidiaries and any third party or infringes or misappropriates any Intellectual Property Right of any other party, including without limitation the unlicensed use, sale, offer for sale, importation, duplication, distribution or incorporation of third party software in any software product of the Company or any of the Subsidiaries. There is no pending Action nor, to the Company's knowledge (or the knowledge of any of its employees), any threatened Action, contesting the validity, ownership or right to use, sell, offer for sale, import, duplicate, license, distribute or otherwise dispose of any Company IP Right nor is there any basis for any such Action or threatened Action and neither the Company nor any of its employees have received any notice regarding any allegations relating to the misappropriation by the Company or, to the Company's knowledge, such employee, of any trade secrets or wrongful disclosure of confidential or proprietary information. Neither the Company nor any of its Subsidiaries has received any notice asserting that any Company IP Right or the proposed manufacture, duplication, distribution, use, sale, offer to sell, importation, license or other disposition thereof conflicts or infringes, misappropriates or will conflict or infringe or misappropriate, the rights of any other party, nor is there any basis for any such assertion.

3.14.5 Maintenance of Intellectual Property. The Company has taken reasonable and practicable steps designed to safeguard and maintain the secrecy and confidentiality of, and its proprietary rights in, the Company IP Rights (other than published or issued patents or patent applications that have been published in accordance with the laws of the jurisdictions in which such patent applications were filed). All officers, employees and

consultants of the Company and of each of its Subsidiaries that have had access to proprietary information of the Company or any of its Subsidiaries, or their customers, suppliers, and/or other third parties having dealings with the Company have executed and delivered to the Company or the Subsidiary an agreement regarding the protection and non-disclosure of such proprietary information, and the assignment of inventions and copyrights to the Company or the Subsidiary; copies of the form of all such agreements (and any variations thereof) have been delivered to Parent's counsel.

3.14.6 List of Company Intellectual Property. Schedule 3.14.6 to the Company Disclosure Letter sets forth a true and complete list and description of the Company's (a) software products and programs, (b) trademarks and service marks which are not federally registered or are not the subject of a federal registration or application, (c) URLs and domain names, and (d) all applications, registrations, filings and other formal actions made or taken pursuant to federal, state and foreign laws by the Company and each of its Subsidiaries to perfect or protect its interest in the Company IP Rights, including, without limitation, all patents, patent applications, copyright registrations and applications therefor, and trademark and service mark applications and registrations. As used herein, the term "*Intellectual Property Rights*" means all worldwide industrial and intellectual property rights, including, without limitation, rights in or arising under the following: patents, patent applications, patent rights, utility models, trademarks, trademark applications, trade names, service marks, service mark applications, URLs, domain names, logos, copyrights, copyright registrations and applications therefor, franchises, licenses, inventions, know-how, trade secrets, customer lists, proprietary information processes and formulae, databases and data collections, all computer software source and object code, algorithms, architecture, structure, screen displays, layouts, inventions, development tools, all documentation and media constituting, describing or relating to the above, including, without limitation, manuals, memoranda and records, and all moral and economic rights of authors and inventors.

3.14.7 Title to Company IP Rights. The Company owns all right, title and interest in and to all Company-owned Company IP Rights free and clear of all Encumbrances and licenses (other than licenses and rights listed in Schedule 3.14.8 to the Company Disclosure Letter and other than non-exclusive licenses of software entered into with end-users of the Company's products in the Ordinary Course of Business and on the Company's standard forms of end-user license agreement, copies of which have been provided to Parent's counsel, or an agreement containing terms that are not substantively different from the terms of the Company's standard form of end-user license agreement). To the Company's knowledge, the Company's right, license and interest in and to all Company IP Rights that are licensed to the Company are free and clear of all Encumbrances and licenses (other than licenses and rights listed in Schedule 3.14.8 to the Company Disclosure Letter).

3.14.8 Licensed Company IP Rights. Schedule 3.14.8 to the Company Disclosure Letter sets forth a true and complete list of (i) all licenses, sublicenses and other agreements as to which the Company or of its Subsidiaries is a party and pursuant to which any Person or entity is authorized to use any Company IP Rights (other than non-exclusive licenses

Surviving Corporation) to provide such Founder indemnification pursuant to the certificate of incorporation and bylaws of the Company, each as such were in effect on the Agreement Date, or contribution (under common law); (c) any rights of such Founder to accrued and unpaid salary and vacation pay; or (d) any rights of such Founder to be paid any cash severance pay under (i) any written agreement of such Founder with VERITAS or Parent or (ii) except with respect to Ravi Thomas, any written severance policy of VERITAS or Parent applicable to such Founder);

9.13 Company Warrants. All Company Warrants shall either have been exercised or shall have terminated and expired as of the Effective Time in accordance with Sections 2.8.4 and 5.12 hereof.

9.14 Non-Competition Agreements. Each of the Key Employee Stockholders listed on Schedule 9.14 hereto shall have executed and delivered the Non-Competition Agreements to Parent.

9.15 Termination of Rights. Any registration rights, rights of refusal, preemptive rights, co-sale rights, information rights, redemption rights and voting rights and voting agreements or voting trusts of any stockholder of the Company shall have been terminated as of the Closing.

9.16 Schedules Updated. Parent shall have received from the Company Schedule 3.3.1 and Schedule 3.3.4 to the Company Disclosure Letter, each updated to reflect each stockholder of the Company as of immediately prior to the Effective Time, and each holder of a Company Option and a Company Warrant as of immediately prior to the Effective Time, giving effect to the exercise, conversion or termination, as applicable, of the Company Warrants as set forth in Section 2.8.4 and any exercise of Company Options.

9.17 Transaction Expenses; Excess Severance. Parent shall have received a certificate in form and substance satisfactory to Parent and executed by the Company's Chief Financial Officer, setting forth and certifying the Company's aggregate liability for Transaction Expenses as of the Closing Date (including all amounts paid through such date), and the amount of Excess Severance (if any) paid by (or committed to be paid by) the Company, which certificate shall be accompanied by such supporting information and calculations as are necessary for Parent to verify and determine such amounts as of the Closing Date.

9.18 Computation Certificate; Escrow Amount Certificate. The Computation Certificate and the Escrow Amount Certificate shall each have been executed and delivered by the Company.

9.19 Escrow Agreement. The Escrow Agreement in substantially the form attached hereto as Exhibit E shall have been executed and delivered by the Representative (as defined in Section 11.5) and the Escrow Agent.

9.20 Assignment of Patent Applications. All of the inventors of each of the patent applications listed in Schedule 9.23 to this Agreement shall have duly and validly assigned to

Jareva, pursuant to a written assignment agreement reasonably acceptable in form and substance to Parent and its legal counsel, all right, title and interest in and to (i) each of the patent applications listed in Schedule 9.23 to this Agreement and (ii) to all inventions and patent rights associated with each of such patent applications.

9.21 Domain Name Registrations. Jagadish Bandhole shall have duly and validly assigned, to either Jareva or Parent (as determined and directed by Parent), pursuant to a written assignment agreement(s) or other recordable form of assignment(s) reasonably acceptable in form and substance to Parent and its legal counsel, all right, title and interest in and to each of the following domain name registrations: (i) Jareva.com (expires 10/26/03); (ii) Jareva.net (expires 11/21/03); (iii) Jareva.org (expires 11/21/03); and (iv) Design2deploy.com (expires 01/16/04).

9.22 Delivery of Audited Financial Statements. The 2000/2001 Financial Statements shall have been audited by KPMG and the Company shall have delivered to VERITAS and Parent the 2000/2001 Financial Statements accompanied by an audit report on the 2000/2001 Financial Statements issued by KPMG.

9.23 Satisfactory Form of Legal Documents. The form, scope and substance of all closing documents and other papers required to be delivered hereunder shall be reasonably acceptable to Parent's counsel.

ARTICLE 10 TERMINATION OF AGREEMENT

10.1 Termination by Mutual Consent. This Agreement may be terminated at any time prior to the Effective Time by the mutual written consent of Parent and the Company.

10.2 Unilateral Termination. This Agreement may be terminated at any time prior to the Effective Time by:

(a) either Parent or the Company, by giving written notice to the other if a court of competent jurisdiction or other Governmental Authority shall have issued a nonappealable final order, decree or ruling or taken any other action, in each case having the effect of permanently restraining, enjoining or otherwise prohibiting the Merger.

(b) either Parent or the Company, by giving written notice to the other, if the Merger shall not have been consummated by midnight Eastern Standard Time on the Termination Date; provided, however, that (i) the right to terminate this Agreement pursuant to this Section 10.2(b) shall not be available to the Company if it has breached its obligations under Section 5.6, and (ii) the right to terminate this Agreement shall not be available to any party whose failure to perform in any material respect any of its obligations or covenants under this Agreement has been a principal cause of or results in the failure of any condition set forth in Article 8 or Article 9 to be fulfilled (a "*Breaching Party*") or if the failure of such condition results from facts or circumstances that constitute a material breach of a representation or

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

VERITAS OPERATING CORPORATION

By: Gary L. Bloom
Name: Gary L. Bloom
Title: President & Chief Executive Officer

JAREVA TECHNOLOGIES, INC.

By: _____
Name: _____
Title: _____

JAGUAR ACQUISITION CORP.

By: Jay A. Jones
Name: Jay A. Jones
Title: Senior Vice President & Chief Administrative Officer

VERITAS SOFTWARE CORPORATION

By: Gary L. Bloom
Name: Gary L. Bloom
Title: President & Chief Executive Officer

The undersigned hereby executes and agrees to become bound by this Agreement for the sole purpose of accepting, subject to approval of the Stockholders, the appointment as Representative pursuant to Section 11.5 above and agreeing to the provisions of such Section 11.5.

REPRESENTATIVE

By: Douglas T. Hickey
Douglas T. Hickey

[Signature Page to Agreement and Plan of Merger]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

VERITAS OPERATING CORPORATION

By: _____

Name: _____

Title: _____

JAGUAR ACQUISITION CORP.

By: _____

Name: _____

Title: _____

JAREVA TECHNOLOGIES, INC.

By: Douglas T. Hickey _____

Name: JAGADISH BANDHOLE

Title: CEO & PRESIDENT

VERITAS SOFTWARE CORPORATION

By: _____

Name: _____

Title: _____

The undersigned hereby executes and agrees to become bound by this Agreement for the sole purpose of accepting, subject to approval of the Stockholders, the appointment as Representative pursuant to Section 11.5 above and agreeing to the provisions of such Section 11.5.

REPRESENTATIVE

By: _____

Douglas T. Hickey

[Signature Page to Agreement and Plan of Merger]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

VERITAS OPERATING CORPORATION

By: _____

Name: _____

Title: _____

JAGUAR ACQUISITION CORP.

By: _____

Name: _____

Title: _____

JAREVA TECHNOLOGIES, INC.

By: _____

Name: _____

Title: _____

VERITAS SOFTWARE CORPORATION

By: _____

Name: _____

Title: _____

The undersigned hereby executes and agrees to become bound by this Agreement for the sole purpose of accepting, subject to approval of the Stockholders, the appointment as Representative pursuant to Section 11.5 above and agreeing to the provisions of such Section 11.5.

REPRESENTATIVE

By: Douglas T. Hickey
Douglas T. Hickey

[Signature Page to Agreement and Plan of Merger]

Schedule 3.14.6

Company Intellectual Property

(d) Applications, registrations, filings and other formal actions:

TTC Ref Country ATTY(s) Handling	Title	Inventor	Application No. Filing Date

May-27-03 10:35 From-PY8008491

+650 527 2591

1

F-123

TTC Ref Country ATTY(s) Handling	Title	Inventor	Application No. Filing Date
020706-000910US BNY (CJK)	Cross-Spectrum Application Model for Dynamic Computing Environments in Software Lifecycle	Bandhole, Jagadish Nanja, Sekaran Balasubramaniam, S.	10/044290 01/11/2002

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